

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

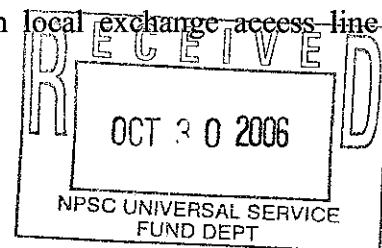
In the Matter of the Nebraska Public	)	Application No. 911-26/
Commission, on its own motion,	)	PI-122
seeking to determine Enhanced Landline	)	
911 surcharge payment requirements for	)	Comments of United Telephone
interconnected Voice over the Internet	)	Company of the West
Protocol Providers.	)	d/b/a/ Embarq

**COMMENTS OF UNITED TELEPHONE COMPANY OF THE WEST d/b/a  
EMBARQ**

United Telephone Company of the West d/b/a Embarq respectfully submits these comments in response to the issues set forth in the Commission's order in the above referenced docket, which it entered on September 26, 2006.

The Commission seeks comment on several issues related to the applicability of the landline Enhanced-911 ("E911") surcharge to interconnected Voice over Internet Protocol ("VoIP") providers. In particular, the Commission seeks comments on whether the Emergency Telephone Communications Act ("Act") requires interconnected VoIP providers to collect and remit landline 911 surcharges or if this requirement is preempted by federal law, and finally whether imposition of the landline 911 surcharge on wholesale providers with whom interconnected VoIP providers contract to provide E911 service is permissible.

The first issue on which the Commission requests comment is whether the Act requires interconnected VoIP providers to collect and remit the landline 911 surcharges imposed by governing bodies. The Commission cites in its order Neb. Rev. Stat. Section 86-435(1) that "[a] governing body incurring costs for 911 service may impose a uniform service surcharge of up to fifty cents per month on each local exchange access line



physically terminating in the governing body's service area." Neb. Rev. Stat. Section 86-427 defines a local exchange access line as "any telephone line that has the ability to access local dial tone and reach a public safety answering point by dialing 911."

It would appear that, under the statute, the key is whether interconnected VoIP service meets the definition of a local exchange access line. The issue of whether VoIP should be classified as telecommunications or information service is currently before the FCC. However, interconnected VoIP service meets the functional definition of Neb. Rev. Stat. Section 86-427 because the service provides dial tone and the ability to make 911 calls. Indeed, the FCC states as much in its June 3, 2005 order requiring VoIP providers to supply 911 capability:

The record clearly indicates, however, that consumers expect VoIP services that are interconnected with the PSTN will function in some ways like a "regular telephone" service. At least regarding the ability to provide access to emergency services by dialing 911, we find these expectations to be reasonable. If a VoIP service subscriber is able to receive calls from other VoIP service users *and* from telephones connected to the PSTN, and is able to place calls to other VoIP service users *and* to telephones connected to the PSTN, a customer reasonably could expect to be able to dial 911 using that service to access appropriate emergency services.<sup>1</sup>

Embarq believes that the Commission has the requisite authority under the Act to require interconnected VoIP providers to collect and remit the landline 911 surcharges.

The second issue on which the Commission seeks comment is whether requiring interconnected VoIP providers to collect and remit the landline 911 surcharges imposed by governing bodies is preempted by federal law. As the Commission notes in its order requesting comments, some states may already require interconnected VoIP providers to

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<sup>1</sup> See *IP-Enabled Services*, WC Docket No. 04-36; *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58, para. 23 (2005) (*VoIP 911 Order*) (footnotes omitted).

collect and remit 911 surcharges and some interconnected VoIP providers already voluntarily collect and remit the surcharge. The FCC notes

[W]hile some state laws today may already require 911 funding contributions from providers of interconnected VoIP, interconnected VoIP providers may not be covered by existing state 911 funding mechanisms in other states. But even in the latter circumstance, the record does not indicate that states are receiving no 911 funding contributions from interconnected VoIP providers. On the contrary, the record indicates that many interconnected VoIP providers currently are contributing to state 911 funding mechanisms. In addition, states have the option of collecting 911 charges from wholesale providers with whom interconnected VoIP providers contract to provide E911 service, rather than assessing those charges on the interconnected VoIP providers directly.<sup>2</sup>

It is clear from this order that the FCC expects interconnected VoIP providers to participate in funding 911 services either directly or indirectly through its wholesale partner. Embarq agrees and supports any Commission action requiring the collection of the surcharge directly from the VoIP provider or its wholesale partner. The best approach, for all parties, is for the governing body to collect the surcharge directly from the VoIP provider, and Embarq fully supports this approach.

The final issue on which the Commission requests comments is whether it is permissible, under the Act, to impose the landline 911 surcharge on wholesale providers with which interconnected VoIP providers contract to provide E911 service. Embarq believes that the Act does permit the 911 surcharge to be imposed on the wholesale providers that contract with the interconnected VoIP providers and supports such action by the Commission. The VoIP provider or its local exchange company partner should be directly responsible for collecting and remitting the fees.

In summary, Embarq supports the Commission's efforts to extend landline 911 surcharges to interconnected VoIP providers and believes that the Act requires

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<sup>2</sup> *VoIP 911 Order*, para. 52.

interconnected VoIP providers to collect and remit the surcharges to the appropriate governing bodies. Embarq also believes that the governing bodies should work directly with the interconnected VoIP providers in the collection and remittance of the surcharges.

Respectfully submitted, this 27<sup>th</sup> day of October 2006.

By: 

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